

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7479 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

- =====
1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

BHARATBHAI MANCHHARAM RAJPUT

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 7479 of 2004
MR NM KAPADIA for Petitioner No. 1
MS HB PUNANI, AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 08/12/2004

ORAL JUDGEMENT

1. Heard ld. counsel Mr. NM Kapadia for the
petitioner detenu and ld. AGP Ms. HB Punani.

Affidavit-in-reply filed on behalf of respondent Commissioner of Police tendered today by ld. AGP Ms. Punani is taken on record.

2. By this petition under Article 226 read with Articles 21 & 22(5) of the Constitution of India, the petitioner detenu has challenged the legality and validity of the order of detention dated 29.05.2004 passed by the Police Commissioner, Surat City, in exercise of the powers conferred on him by Section 3(2) of The Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as the PASA Act) against the petitioner-detenu. The petitioner detenu has been branded as "boot-legger" as defined under Sec.2(b) of the PASA Act.

3. The grounds for detention supplied to the detenu petitioner indicate that the petitioner was found involved in five offence punishable under Sections 66B, 65AE, 81 of the Bombay Prohibition Act, all registered with Salabatpura Police Station and registered on the same day i.e. 25.03.2004. The said offences are registered in seriatim chronologically.

4. The order of the detention is assailed on various grounds and it is contended by ld. counsel Mr. Kapadia that there was no sufficient ground for recording subjective satisfaction to the effect that the activities of the petitioner detenu are threat to the maintenance of public order on account of his bootlegging activities. The detaining authority, for recording subjective satisfaction, considered mainly two aspects. The first aspect is registration of five criminal cases under the Bombay Prohibition Act and the second aspect is recording of the statements of the witnesses by the sponsoring authority who have claimed privilege. Ld. counsel Mr. Kapadia has mainly focussed his arguments on the ground that the order of detention requires to be quashed as there is a delay caused in passing the order of detention which goes to the root of the validity of the order. In support of this submission, ld. counsel Mr. Kapadia has taken this court through the grounds of detention conveyed to the petitioner while executing the order of detention. As stated above, all the five cases are registered against the petitioner in seriatim chronologically on the same day at same police station i.e. Salabatpura Police Station and the petitioner has been branded as supplier of prohibited liquor to consumers and one statement is also relied upon by the detaining authority wherein the witness has contended that he was persuaded to supply liquor bottles to the

consumers and he was offered high amount of rickshaw fare. The petitioner was arrested on 25.03.2004 for the offence shown at Sr.No.2 of the offences shown in the tabular form on page-1 of the grounds of detention. In respect of other four offences, he was formally arrested on 09.04.2004. So, it was possible for the sponsoring authority to place the papers for obtaining appropriate orders before the detaining authority immediately after the registration of all the five offences. So, if 25.03.2004 is considered to be a relevant date, then the order of detention can be said to have been passed after about 2 months. This delay is unreasonable. Of course, in para-11 of the affidavit tendered today, the detaining authority has tried to explain the allegations as to the delay. According to the detaining authority, the sponsoring authority has submitted the proposal on 18.04.2004 i.e. after approximately about 20 days from the date of arrest. Court is not convinced with the fact that the proposal submitted on 18.04.2004 was received by the detaining authority on 25.04.2004. There is no explanation on behalf of the sponsoring authority as to why the proposal was not placed before the detaining authority till 18.04.2004 if the preventive detention was necessary in the interest of public order. Explanation is not found satisfactory and so delay in passing the order has remained unexplained.

5. The order of detention is also found unsustainable on the ground that representation made by the detenu on 16.06.2004, has not been dealt with promptly. Dealing with representation also includes steps taken immediately after receipt of representation and prompt conveyance of the decision taken on such representation. Representation made on 16.06.2004 conveniently reached to the office of respondent No.2 on 19.06.2004 and the same was rejected on 21.06.2004 by the authority. 20/06/2004 was Sunday. So, it can be said that it was decided promptly. However, the decision as to rejection was not conveyed to the detenu till 26.06.2004 and there is no explanation by the State Government as to why it was not conveyed to the detenu promptly. Detenu is detained in District Jail, Nadiad which is a district in the close vicinity of district Gandhinagar where the secretariat of respondent No.2 is located. So, in view of the ratio of the decision of the Apex Court in the case of Harish Pahwa v/s State of U.P., AIR 1981 SC 1126, the impugned order of detention also requires to be quashed on the ground of delay in communicating decision on the representation to the detenu promptly. Relevant observations of the Apex Court are reproduced as under:-

"..... We may make it clear, as we have done on numerous earlier occasions, that this Court does not look with equanimity upon such delays when the liberty of a person is concerned. Calling comments from other departments, seeking the opinion of Secretary after Secretary and allowing the representation to lie without being attended to is not the type of action which the State is expected to take in a matter of such vital import. We would emphasise that it is the duty of the State to proceed to determine representations of the character above mentioned with the utmost expedition, which means that the matter must be taken up for consideration as soon as such a representation is received and dealt with continuously (unless it is absolutely necessary to wait for some assistance in connection with it) until a final decision is taken and communicated to the detenu. This is not having been done in the present case we have no option but to declare the detention unconstitutional."

6. For the reasons aforesaid, this petition is allowed. Impugned order of detention dated 29.05.2004 passed by the Police Commissioner, Surat City is hereby quashed and set aside and detenu is hereby ordered to be set at liberty forthwith if he is not required to be detained in any other case. Rule is made absolute.

Direct Service is permitted.

[C. K.BUCH, J]

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